

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3652 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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FAKIR BAI MUNNIBEN ABDULSHAH

Versus

DISTRICT MAGISTRATE, BHAVNAGAR  
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Appearance:

MR JK PARMAR for Petitioner  
M/S PATEL ADVOCATES for Respondent No. 1  
RULE SERVED for Respondent No. 2, 3  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/12/1999

ORAL JUDGEMENT

#. The District Magistrate, Bhavnagar passed an order on April 3, 1999, in exercise of power under section 3 (2) of the Prevention of Anti-social Activities Act, 1985, ("PASA" for short), detaining the petitioner - Fakir Bai

Munniben Abdulsha of Bhavnagar under the provisions of the PASA Act.

#. The grounds of detention indicate that the detaining authority after considering the 7 offences registered against the detainee under the Bombay Prohibition Act and the statements of three anonymous witnesses was satisfied that the detainee-petitioner is a "bootlegger" and the witnesses suffer from genuine fear from the detainee in respect of person and property of the witnesses. The authority therefore exercised powers under section 9(2) of the PASA Act and maintained anonymity of the witnesses. After considering the possibility of resorting to less drastic remedies, the authority stated that since the petitioner is required to be immediately prevented from pursuing illegal activities, the provisions are required to be resorted to.

#. The detainee challenges the order of detention on the ground of improper exercise of power under section 9(2) of the PASA Act of claiming privilege. It has been contended that the detaining authority has verified the statements on April 3, 1999 and on the same day the order is passed and therefore, there was no time for the detaining authority to arrive at a genuine satisfaction for exercise of powers under section 9(2) of the PASA Act. Another ground that is raised is that by making a representation, copies of the Chemical Analyzer's report/FSL report were requested for and the same have not been supplied. This has affected the petitioner's right of making a representation. The continued detention therefore is vitiated and the petition may be allowed.

#. Mr. Parmar, learned advocate appearing for the petitioner has restricted his arguments to the above points only. He has relied upon the decision in the case of Kalidas C. Kahar vs. State of Gujarat, reported in 1993 (2) GLR 1659.

#. Mr. H.H.Patel, learned AGP opposed this petition. He however does not dispute the factual aspect of verification of the order being of the same date. As regards the representation, Mr. Patel states, after verifying the file, that an undated representation was received by the State Government and was rejected on May 19, 1999. He states that, in that representation, demand for FSL report/CA's report has not been raised. No other representation is received by the State Government and therefore, that point is not available to the petitioner and the petition may therefore be dismissed.

#. Having regard to the contentions of the rival side, the first contention is regarding improper use of power under section 9(2) of PASA Act.

#. The powers under section 9(2) of the PASA of not disclosing the material to the detinue are to be exercised where it is found expedient to do it in public interest. This exercise of power will have a direct bearing on the right of the detinue of making a representation envisaged under article 22(5) of the Constitution of India. The authority has therefore to keep in mind these two aspects while deciding the exercise of powers. For this purpose, the material before the authority has to be examined. This will require time. In the instant case, the entire exercise is carried out by the detaining authority on April 3, 1999. The detaining authority has not filed any affidavit-in-reply to indicate as to what contemporaneous material was considered by it, when was the material received, when were the statements verified and when were the orders passed. In the absence of any explanation in this regard, the Court is at loss to appreciate as to how this exercise was done by the authority on the same day. In this regard, the decision in the case of Kalidas C. Kahar relied upon by Mr. Parmar, learned advocate for the petitioner can be profitably employed in service. The decision in the case of Chandrakant N. Patel vs. State of Gujarat, reported in 1994 (1) GLR 761 will also be applicable to the facts of the present case and therefore, the petition deserves to be allowed on this ground alone i.e. improper exercise of powers resulting in the infringement of right of the detinue of making the representation.

#. This petition is therefore allowed. The order passed by the District Magistrate, Bhavnagar on April 3, 1999 in respect of the petitioner-detinue-Fakirbai Munniben Abdulsha is hereby quashed and set aside and the petitioner-detinue-Fakirbai Munniben Abdulsha is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

(A.L. DAVE, J.)

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